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T.R.A. DOCKET ROOM

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June 11, 2004

Tennessee Regulatory Authority
ATTN: Sharla Dillon
460 James Robertson Parkway
Nashville, TN 37238

Via hand delivery

RE Enforcement of Interconnection Agreement between Bell South
Telecommunications, Inc. & NuVox Communications, Inc.; Docket No
04-00133

Dear Sharla

Enclosed for filing in the above-referenced matter please find the original and 13
copies of the Answer of NuVox Communications, Inc. Thank you for your assistance.
Please do not hesitate to contact me if you have any questions.

Sincerely,



H. LaDon Baltimore

HLD/dcg
Enclosures

cc Guy Hicks, Esq
John Heitmann, Esq

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Before the
TENNESSEE REGULATORY AUTHORITY

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T.R.A. DOCKET ROOM

In re:)
)
)
- Enforcement of Interconnection Agreement)
Between BellSouth Telecommunications, Inc. and)
NuVox Communications, Inc.)
_____)

Docket No. 04-00133

ANSWER OF NUVOX COMMUNICATIONS, INC.

NuVox Communications, Inc. ("NuVox"), by its attorneys, hereby files this Answer to the Complaint of BellSouth Telecommunications, Inc. to Enforce Interconnection Agreement and Request for Expedited Proceedings ("Complaint") filed with the Tennessee Regulatory Authority ("TRA" or "Authority") on May 4, 2004.

PRELIMINARY STATEMENT

BellSouth's complaint is frivolous and should be dismissed or denied. The parties' Agreement, which incorporates certain auditing requirements set forth in the Federal Communications Commission's ("FCC's") *Supplemental Order Clarification*,¹ does not provide BellSouth with unfettered discretion to conduct an audit of all circuits converted from special access to unbundled network element ("UNE") combinations of loop and transport ("EELs").

As the Georgia Public Service Commission ("Georgia Commission") already has found in reviewing these same issues and the same relevant Agreement provisions,² BellSouth

¹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 9587 (2000) ("*Supplemental Order Clarification*")

² BellSouth fails to set forth all relevant provisions of the Agreement in its complaint. As discussed herein, section 35.1 of the General Terms and Conditions requires the parties to comply with all applicable law, including "all applicable federal, state, and local statutes, rules, regulations, codes, effective orders, decision, injunctions, judgments, awards and decrees that relate to the obligations under this Agreement." Agreement, General Terms and Conditions, § 35.1. Pursuant to section 23 of the General Terms and Conditions, the Agreement is "governed by, and construed and enforced in accordance with, the

must demonstrate a concern prior to conducting an audit of particular converted circuits and it must hire an independent auditor to conduct the audit in compliance with AICPA standards.³ In short, the Georgia Commission's decision vindicated NuVox's rejection of BellSouth's audit request on grounds that BellSouth had failed to demonstrate a concern (the Georgia Commission found that BellSouth eventually demonstrated a concern with respect to only a small number of circuits; however, BellSouth supplied billing materials that convinced the Georgia Commission of this only days before the Georgia Commission adopted its decision and more than two years after BellSouth filed its Georgia complaint), that the audit should be limited in scope (to a small subset of converted circuits – 44), and that the auditor BellSouth selected for the audit (the same auditor proposed in this case, as well as in the DeltaCom and XO audits) was not acceptable.

BellSouth has not complied with the requirements of the Agreement in this case, and, therefore, NuVox is not in violation of the Agreement. In this case, BellSouth neither has demonstrated a concern with respect to the converted circuits it seeks to audit nor has it hired an

laws of the state of Georgia " Agreement, General Terms and Conditions, § 23 Under Georgia law, laws that exist at the time and place of the making of a contract, enter into and form a part of it and, although parties may stipulate for other legal principles to govern their contractual relationship than those prescribed by law, these exemptions must be expressly stated in the contract The Agreement contains no express exemptions from the concern and independent auditor requirements established by the FCC in the *Supplemental Order Clarification* In accordance with these provisions of the Agreement, these *Supplemental Order Clarification* requirements are incorporated into the Agreement as applicable law, and BellSouth is required to comply with them prior to proceeding with an audit Sections 23 and 35.1 of the General Terms and Conditions are appended hereto as Attachment 1

³ See *Enforcement of Interconnection Agreement between BellSouth Telecommunications, Inc. and NuVox Communications, Inc.*, Georgia Commission Docket No. 12778-U At this time, the Georgia Commission has voted and its written decision has yet to be released It is NuVox's understanding that the Georgia Commission's written decision, when finalized, will adopt parts of the Hearing Officer's recommendation supported by NuVox, parts of two Georgia Commission Staff recommendations, and amendments adopted by the Georgia Commissioners overruling parts of the Hearing Officer and initial Staff Recommendations NuVox will provide the Authority with a copy of Georgia Commission's order when it becomes available At that time, NuVox also will provide the Authority with a copy of the record and its briefing materials and submissions from that proceeding Representations made by NuVox with respect to the Georgia Commission's decision are made based upon statements made and votes cast by Georgia Commissioners at the Georgia Commission meeting on May 18, 2004 The representations made herein are intended to be accurate and fair NuVox reserves the right to supplement its Answer and make any necessary modifications after release of the Georgia Commission's order

independent auditor. Notably, even if BellSouth had satisfied these prerequisites to conducting an audit, BellSouth's right to audit is limited to a review of the circuits for which it has demonstrated a concern. BellSouth cannot use the audit process as a fishing expedition to review each and every circuit where no concern exists.⁴

Moreover, BellSouth's reliance on the Pre-Hearing Officer's recommendation in Docket Number 02-01203 is misplaced. BellSouth and NuVox have entered into their own Agreement, which is separate and distinct from BellSouth's interconnection agreements with XO and DeltaCom. As such, the Hearing Officer's Report and Recommendation cited to by BellSouth is neither binding nor relevant to the evaluation of the BellSouth/NuVox Agreement.

NuVox does not necessarily oppose expedited treatment of this case,⁵ but submits that the best means to do so would be by either (1) the Authority's immediate dismissal or denial of BellSouth's complaint, or (2) incorporating the record developed before the Georgia Commission (including the hearing transcript and written submissions by the parties) into this proceeding.⁶ NuVox and BellSouth have entered into a multi-state Interconnection Agreement that governs their relationship throughout the BellSouth region. The parties submitted the Agreement to each state commission separately, and each state commission has approved the Agreement (thus, it is technically a different Agreement in each state, although the provisions

⁴ BellSouth has stated that it only seeks to audit converted circuits, not new EELs. BellSouth is not relinquishing any rights by offering to audit only converted circuits; BellSouth does not have any right to audit new EELs.

⁵ Whether BellSouth deserves or is entitled to expedited treatment is a different matter. In Georgia, BellSouth took more than two years to produce evidence necessary to convince the Georgia Commission that it had a concern with respect to 44 circuits. In Tennessee, it took BellSouth more than two years to file the instant complaint. In September 2003, NuVox requested BellSouth to provide documentation supporting its alleged concern in Tennessee. More than six months later, BellSouth still has not provided any. Thus, it does not appear that BellSouth has conducted itself in a manner that would suggest it deserves or is entitled to expedited treatment of its complaint regarding EEL audits.

⁶ *See Enforcement of Interconnection Agreement between BellSouth Telecommunications, Inc. and NuVox Communications, Inc.*, Georgia Commission Docket No. 12778-U.

relevant to this case do not vary in any state). As noted above, NuVox and BellSouth already have litigated the exact same issues involving the same provisions in their Agreement before the Georgia Commission. Because BellSouth has asked the Authority to review the same issues as those that were before the Georgia Commission, interpreting the same Interconnection Agreement under governing principles of Georgia contract law (which applies in Tennessee as well), incorporating the pleadings prepared in the Georgia proceeding and the hearing transcript would facilitate the Authority's resolution of the issues herein, and should enable an expedited resolution of the matter.

In sum, the Authority should dismiss or deny BellSouth's complaint. After two years of litigation in Georgia, BellSouth knows what it must do in order to proceed with an audit of any of NuVox's converted EEL circuits. If BellSouth demonstrates a concern with respect to a particular circuit, NuVox will let a truly independent auditor (not the consulting shop BellSouth currently proposes) do an AICPA-compliant audit of any circuits for which BellSouth demonstrates a concern. In the meantime, the Authority should not allow BellSouth to drain its resources or those of NuVox, while *BellSouth* reluctantly takes steps necessary (if it proves it is so inclined to do so) to comply with the Agreement.

SPECIFIC RESPONSES

1. NuVox submits that no response is required to paragraph 1 of the complaint.
2. Subject to the clarification set forth above in the Preliminary Statement regarding the "nine-state Interconnection Agreement", NuVox admits the allegations set forth in paragraph 2 of the complaint

3. NuVox submits that no response is required to paragraph 3 of the complaint.

4. NuVox admits the allegations set forth in paragraph 4 of the complaint.

5. Subject to the clarification set forth above in the Preliminary Statement regarding the “nine-state Interconnection Agreement”, NuVox admits the allegations set forth in paragraph 5 of the complaint.

6. NuVox states that Section 15 of the Agreement speaks for itself and that no response is required to the first sentence of paragraph 6 of the complaint. NuVox admits that this complaint is within the Authority's jurisdiction. NuVox denies the remaining allegations set forth in paragraph 6 of the complaint. By way of further answer, NuVox disagrees with BellSouth's characterization of the disputes set forth in paragraph 6 of the complaint. In its complaint, BellSouth seeks to subject its auditing rights only to the provisions contained in Section 10.5.4 of the parties' Agreement. In addition to complying with the terms of Section 10.5.4, however, BellSouth's auditing rights and the Authority's resolution of any dispute arising under the Agreement are subject to the concern and independent auditor requirements set forth in the FCC's *Supplemental Order Clarification* which are incorporated into the Agreement by operation of Georgia law and Section 35.1 of the General Terms and Conditions of the Agreement. The parties do not dispute that the Agreement is governed by Georgia law.⁷ Section 35.1 of the General Terms and Conditions requires each party to comply with all applicable law.⁸ Accordingly, the concern and independent auditor obligations set forth in *Supplemental Order*

⁷ Agreement, General Terms and Conditions, § 23 (stating “[t]his Agreement shall be governed by, and construed and enforced in accordance with, the laws of the state of Georgia ”)

⁸ See Attachment 1 Agreement, General Terms and Conditions, § 35.1 (stating that each Party shall comply with “all applicable federal, state, and local statutes, laws, rules, regulations, codes, effective orders, decisions, injunctions, judgments, awards and decrees that relate to its obligations under this Agreement. Nothing in this Agreement shall be construed as requiring or permitting either Party to contravene any mandatory requirement of Applicable Law ”)

Clarification are incorporated into the Agreement by operation of Georgia law and Section 35.1 of the General Terms and Conditions of the Agreement. The Agreement contains no exemption from these requirements and BellSouth has failed to comply with them.

7. NuVox admits the allegations set forth in paragraph 7 of the complaint.

8. NuVox admits the allegations set forth in paragraph 8 of the complaint.

9. NuVox denies the allegations set forth in paragraph 9 of the complaint. In addition to the audit provision contained in Section 10.5.4 of Attachment 2 to the Agreement, BellSouth's audit request must comply with the rules governing such audits, as set forth in the FCC's *Supplemental Order Clarification*. In the *Supplemental Order Clarification*, the FCC found, *inter alia*, that: (1) audits will not be routine practice and only may be conducted under limited circumstances and only when the incumbent local exchange carrier ("ILEC") has a concern that a requesting carrier is not meeting the qualifying criteria;⁹ and (2) such an audit must be performed by an independent third party that is hired and paid for by the ILEC.¹⁰

10. NuVox admits that it received a letter from BellSouth dated March 15, 2002. NuVox states that the letter speaks for itself, and denies any suggestion in BellSouth's complaint that the letter complies with the "Agreement's audit provision."

11. NuVox admits the allegations set forth in paragraph 11 of the complaint.

12. NuVox admits the allegations set forth in paragraph 12 of the complaint.

13. In response to paragraph 13 of the complaint, NuVox admits that approximately 443 circuits were converted to EELs in Tennessee.

⁹ *Supplemental Order Clarification*, 15 FCC Rcd at 9603, ¶ 31 & n 86 (stating "[t]he incumbent LECs state that audits will not be routine practice, but will only be undertaken when the incumbent LEC has a concern that a requesting carrier has not met the criteria for providing a significant amount of local exchange traffic [w]e agree that this should be the only time that an incumbent LEC should request an audit ")

¹⁰ *Id.* at 9604, ¶ 31

14. NuVox admits the allegations contained in paragraph 14 of the complaint.

15. NuVox admits the allegations contained in paragraph 15 of the complaint.

By way of further answer, NuVox states that in the *Supplemental Order Clarification*, the FCC established three so-called "safe harbor" circumstances that allow requesting carriers to self-certify to incumbent LECs that they are complying with the FCC's temporary use restrictions by providing a significant amount of local exchange service over the converted circuits.¹¹ NuVox states that it was its general practice to self-certify to BellSouth that it provided a significant amount of local exchange service over the converted circuits through Option 1.

16. NuVox lacks knowledge or information sufficient to admit or deny the statement set forth in paragraph 16 of the complaint. By way of further answer, NuVox states that it has requested traffic studies from BellSouth, but BellSouth has refused to provide NuVox with any traffic studies or other documentation supporting its allegation that "in the months leading up to March 2002, that the local exchange traffic passed from NuVox to BellSouth was inordinately low in Florida and Tennessee".

17. In response to paragraph 17 of the complaint, NuVox admits that it received a letter from BellSouth dated March 15, 2002. NuVox denies that BellSouth's letter, in and of itself, gives BellSouth the right to commence an audit under the Agreement. By way of further answer, NuVox states that BellSouth is required to demonstrate a concern and to hire an independent auditor prior to conducting an audit. BellSouth did not demonstrate a concern in its letter nor did it select an independent auditor, and BellSouth has not done so at any point since sending that letter.

¹¹ *Id.* at 9598, ¶ 22

18. NuVox admits the allegations contained in paragraph 18 of the complaint.

By way of further answer, NuVox states that it has refused to permit BellSouth to conduct the audit because BellSouth has not complied with the prerequisites for conducting an audit, including demonstrating a concern for the circuits to be audited and hiring an independent auditor. Moreover, BellSouth seeks to audit all converted circuits, not solely those circuits for which BellSouth now claims it has a concern.

19. NuVox lacks knowledge or information sufficient to admit or deny the allegations set forth in paragraph 19 of the complaint.

20. NuVox lacks knowledge or information sufficient to admit or deny the allegations set forth in paragraph 20 of the complaint.

21. NuVox denies the allegations contained in paragraph 21 of the complaint.

By way of further answer, NuVox states that BellSouth had not provided sufficient evidence in support of its allegation that NuVox is not providing a significant amount of local service on each of the 44 circuits at issue in Georgia. NuVox lacks knowledge or information sufficient to admit or deny the allegations set forth in the last sentence of paragraph 21 of the complaint.

22. NuVox lacks knowledge or information sufficient to admit or deny the allegations set forth in paragraph 22 of the complaint.

23. NuVox lacks knowledge or information sufficient to admit or deny the allegations set forth in paragraph 23 of the complaint. By way of further answer, NuVox states that it has requested that BellSouth provide records or other documentation in support of its allegations, but, to date, BellSouth has refused to provide any documentary proof in support of its claims.

24. NuVox lacks knowledge or information sufficient to admit or deny the allegations set forth in the paragraph 24 of the complaint.

25. NuVox denies the allegations contained in paragraph 25 of the complaint. By way of further answer, NuVox states that BellSouth's tariffed special access rates may be applicable to circuits that do not comply with the significant local use requirement. BellSouth is not automatically entitled to rerate these circuits to special access rates on the basis of an incorrect certification. As stated above, the FCC specified three so-called safe harbor circumstances that allow requesting carriers to self-certify to incumbent LECs that they are complying with the FCC's temporary use restriction. If a converted circuit does not qualify under the option pursuant to which it was certified, that converted circuit still might satisfy one of the remaining two safe harbors.

26. NuVox denies the allegations contained in paragraph 26 of the complaint.

27. NuVox denies the allegations contained in paragraph 27 of the complaint. By way of further answer, under the Agreement, BellSouth must file a post-audit complaint with the Authority if it seeks a redress as a result of the audit.¹²

28. NuVox denies the allegations contained in paragraph 28 of the complaint. By way of further answer, as the Georgia Commission already has found, NuVox was and remains correct in insisting that BellSouth is required to demonstrate a concern and to retain an independent auditor prior to conducting an audit. BellSouth has done neither in this case.

¹² See Agreement, Att 2, § 10.5.4 (stating "[i]f, based on its audits, BellSouth concludes that [NuVox] is not providing a significant amount of local exchange traffic over the combinations of loop and transport network elements, BellSouth may file a complaint with the appropriate Commission, pursuant to the dispute resolution process as set forth in this Agreement")

Moreover, BellSouth is not permitted to conduct a full-scale audit of all converted circuits; BellSouth only may audit those circuits for which it demonstrates a concern.¹³

29. NuVox denies the allegations contained in paragraph 29 of the complaint. By way of further answer, as the Georgia Commission already has found, BellSouth is required to demonstrate a concern and to appoint an independent auditor to conduct the audit. BellSouth has done neither in this case.

30. NuVox admits the first sentence of paragraph 30 of the complaint. By way of further answer, contrary to BellSouth's allegation, as the Georgia Commission already has found, the Agreement incorporates the concern and independent auditor requirements of the FCC's *Supplemental Order Clarification* and requires BellSouth to demonstrate a specific, bona fide and legitimately related concern that NuVox has not met the criteria to which it certified compliance.¹⁴ Indeed, BellSouth initially agreed with NuVox that the language of footnote 86 in the *Supplemental Order Clarification* required BellSouth to disclose to NuVox its concern that prompted the audit request.¹⁵ BellSouth has not demonstrated a concern with respect to any converted EEL circuit in this case.

Because the *Supplemental Order Clarification* contemplates that audits will be rare and only undertaken for the purpose of pursuing a legitimate and rationally related concern regarding compliance, the audit must not begin prior to BellSouth demonstrating its specific concern for each circuit at issue. BellSouth's lack of a specific, bona fide and legitimately related concern regarding NuVox's compliance demonstrates that BellSouth seeks an audit that is not permitted.

¹³ *Supplemental Order Clarification*, 15 FCC Rcd at 9603, at note 86

¹⁴ *Id.*

¹⁵ The e-mail memorializing this conversation along with other relevant evidentiary material will be provided as part of the submission of the record and pleading materials from the Georgia Commission case

NuVox denies the remainder of the allegations set forth in paragraph 30 of the complaint. By way of further answer, NuVox states that the Agreement specifically imposes a requirement on BellSouth that BellSouth must demonstrate a concern prior to conducting an audit.¹⁶ Furthermore, there is no "TRA Hearing Officer's Report" relevant to this case. The Authority has not yet reviewed the BellSouth/NuVox Agreement, and a Hearing Officer Report reviewing different language in a different interconnection agreement is irrelevant to the facts in this case.

31. NuVox admits the allegations contained in the first sentence of paragraph 31. NuVox denies the allegations contained in the remainder of paragraph 31. By way of further answer, NuVox notes that in stating the allegation, BellSouth shifts from properly characterizing the dispute as being over the auditor's independence to whether both parties must agree on the choice of auditor prior to commencing the audit. BellSouth's slight-of-hand, however, does not cure its failure to select an independent third party auditor. In the *Supplemental Order Clarification*, the FCC explicitly requires the auditor to be independent.¹⁷ Moreover, the Georgia Commission agreed that the auditor must be independent and capable of performing an AICPA-compliant audit, and thus found that BellSouth's requested auditor was not acceptable.

BellSouth has proposed to use as auditor a consulting enterprise that is incapable of performing an AICPA-compliant audit on its own and that has demonstrated a lack of discretion and good judgment by engaging in private mid-audit conversations with BellSouth without the audited party present. An independent auditor simply would not privately seek BellSouth's help in conducting an audit. Yet, the record in the Georgia proceeding demonstrates

¹⁶ See Agreement, Att 2, § 10.5.4, Agreement, General Terms and Conditions, 35.1 (stating that the parties are subject to all applicable federal and state law, which incorporates the *Supplemental Order Clarification*)

¹⁷ *Supplemental Order Clarification*, 15 FCC Rcd at 9604, ¶ 31

that it did so. Moreover, the principals of BellSouth's proposed auditor each have had prior careers with ILECs and their present consulting shop has a client base that appears to be composed almost entirely of ILECs and ILEC affiliates. In addition, in its proposal to BellSouth, the proposed auditor touts its success in using audits to recover millions of dollars for its ILEC clients. These circumstances suggest a biased notion of what would constitute a "successful audit" and an overall bias that would be difficult to overcome, notwithstanding the best of intentions.

32. NuVox denies the allegations set forth in paragraph 32 of the complaint. Although there are several additional issues that NuVox would prefer to have resolved prior to initiation of an audit, NuVox and BellSouth previously agreed that they could be addressed in a state commission complaint filed by BellSouth, which is required under Section 10.5.4 of the Agreement prior to BellSouth's taking action on any finding of non-compliance.¹⁸ For example, BellSouth has stated its intention to reconvert to special access any circuit found not to be in compliance and to charge a special access nonrecurring charge for doing so. In such instance, BellSouth, however, only would be entitled to the same billing change charge that applied to the original conversion. In addition, NuVox has previously indicated its consent to BellSouth's assertion that BellSouth must pay for the cost of the audit and that any audit to be conducted will cost NuVox nothing.

33. NuVox denies the allegations contained in paragraph 33 of the complaint. The record compiled before the Georgia Commission reveals that, in negotiating their interconnection agreement, the parties agreed to delete language that could have been interpreted

¹⁸ Section 10.5.4 of the Agreement provides that BellSouth may invoke the dispute resolution provisions of the Agreement and file a complaint with the Authority if an audit determines that certain circuits are not in compliance with the FCC's temporary use restriction. BellSouth already has indicated that it has no intention of abiding by this provision and that it would exercise self-help based on a negative audit finding.

to provide BellSouth with the sole discretion to conduct, and thus have an unconditional right to, an audit. Contrary to BellSouth's assertion that it has an "unconditional right" to audit NuVox's records, the FCC made clear in the *Supplemental Order Clarification* that BellSouth's right to audit is limited. The Agreement incorporates these requirements. Specifically, the FCC found that: (1) audits will not be routine practice and may be conducted only under limited circumstances and only when the ILEC has stated a concern that the requesting carrier is not meeting the qualifying criteria; and (2) such an audit must be performed by an independent third party, which is hired and paid for by the ILEC.¹⁹

CAUSES OF ACTION

34. NuVox incorporates its responses to paragraphs 1-33 as if set forth fully herein.

35. NuVox denies the allegations set forth in paragraph 35 of the complaint, to the extent that BellSouth claims that NuVox breached the Agreement. NuVox admits that the Agreement is governed by Georgia law.

36. NuVox denies the allegations set forth in paragraph 36 of the complaint. By way of further answer, NuVox states that this complaint does not pertain to damages; the purpose of this complaint is solely to determine whether BellSouth is permitted to conduct an audit

37. NuVox denies the allegations set forth in the first sentence in paragraph 37 of the complaint. By way of further answer, BellSouth is not permitted to conduct an audit of all converted circuits. Further, as stated above, BellSouth is not required to conduct an audit of any circuit until BellSouth has demonstrated a concern, which it has not done. NuVox lacks

¹⁹ *Supplemental Order Clarification*, 15 FCC Rcd at 9587, ¶ 1, 9603, ¶ 31 & n 86

knowledge or information sufficient to admit or deny the allegations contained in the second sentence of paragraph 37 of the complaint.

REQUEST FOR RELIEF

1. For the reasons stated above, NuVox does not object to granting expedited treatment in this case via (1) the Authority's immediate dismissal or denial of BellSouth's complaint, or (2) incorporating the record developed before the Georgia Commission (including the hearing transcript and written submissions by the parties) into this proceeding.²⁰

2. For the reasons stated above, NuVox requests that the Authority deny BellSouth's prayer for relief.

3. For the reasons stated above, NuVox requests that the Authority deny BellSouth's prayer for relief.

4. For the reasons stated above, NuVox requests that the Authority deny BellSouth's prayer for relief. By way of further answer, BellSouth seeks access to any and all records of its choosing, including records that contain customer proprietary network information (CPNI) and records that are carrier proprietary information (CPI). Under section 222 of the Communications Act of 1934, as amended (the "Act"), carriers only are permitted to use CPNI and CPI for the purpose of providing the telecommunications services requested. The information that BellSouth already has used – CPNI and NuVox CPI – and the information that BellSouth seeks to use – more CPNI and CPI (including third party CPI) – was provided solely for the purpose of BellSouth's provision of UNEs and other services. The purpose for which BellSouth intends to use CPNI and CPI is not permitted under the Act, and the Authority should not sanction BellSouth's misuse of CPNI and CPI.

²⁰ See *Enforcement of Interconnection Agreement between BellSouth Telecommunications, Inc and NuVox Communications, Inc*, Georgia Commission Docket No. 12778-U

5. NuVox requests that the Authority deny BellSouth's request for interest.

Neither Section 10.5.4 of the parties' Agreement nor the *Supplemental Order Clarification* provide for interest. Moreover, as stated above, the issue of damages, if any, is not properly part of this proceeding.


6. For the reasons set forth above, NuVox requests that the Authority deny granting BellSouth any other relief.

WHEREFORE, NuVox respectfully requests that the Tennessee Regulatory Authority dismiss or deny BellSouth's complaint and all of the relief sought forth therein.

Respectfully submitted,

NuVox Communications, Inc.

John J. Heitmann
Jennifer M. Kashatus
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Counsel to NuVox Communications, Inc

June 11, 2004

Certificate of Service

The undersigned hereby certifies that on this the 11th day of June, 2004, a true and correct copy of the foregoing has been forwarded via first class U S Mail, hand delivery, overnight delivery, or facsimile transmission to the following.

Guy Hicks
Bellsouth Telecommunications, Inc.
333 Commerce Street, Suite 2101
Nashville, TN 37201


H LaDon Baltimore

ATTACHMENT 1

AGREEMENT

THIS AGREEMENT is made by and between BellSouth Telecommunications, Inc., (“BellSouth”), a Georgia corporation, and TriVergent Communications, Inc. (“TCI”), a South Carolina corporation, on behalf of itself and its certificated operating affiliates identified in Part C hereof, and shall be deemed effective as of June 30, 2000. This Agreement may refer to either BellSouth or TCI or both as a “Party” or “Parties “.

WITNESSETH

WHEREAS, BellSouth is an incumbent local exchange telecommunications company (“ILEC”) authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

WHEREAS, TCI is an alternative local exchange telecommunications company (“CLEC”) authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

WHEREAS, the Parties wish to resell BellSouth’s telecommunications services and/or interconnect their facilities, for TCI to purchase network elements and other services from BellSouth, and to exchange traffic specifically for the purposes of fulfilling their applicable obligations pursuant to sections 251 and 252 of the Telecommunications Act of 1996 (“the Act”).

NOW THEREFORE, in consideration of the mutual agreements contained herein, BellSouth and TCI agree as follows:

1. **Purpose**

The resale, access and interconnection obligations contained herein enable TCI to provide competing telephone exchange service to residential and business subscribers within the territory of BellSouth. The Parties agree that TCI will not be considered to have offered telecommunications services to the public in any state within BellSouth’s region until such time as it has ordered services for resale or interconnection facilities for the purposes of providing business and/or residential local exchange service to customers. Furthermore, the Parties agree that execution of this agreement will not preclude either party from advocating its position before the Commission or a court of competent jurisdiction.

BellSouth of said change and request that an amendment to this Agreement, if necessary, be executed to reflect said change.

- 21.3 No modification, amendment, supplement to, or waiver of the Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties.
- 21.4 Execution of this Agreement by either Party does not confirm or infer that the executing Party agrees with any decision(s) issued pursuant to the Telecommunications Act of 1996 and the consequences of those decisions on specific language in this Agreement. Neither Party waives its rights to appeal or otherwise challenge any such decision(s) and each Party reserves all of its rights to pursue any and all legal and/or equitable remedies, including appeals of any such decision(s).
- 21.5 In the event that any effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of TCI or BellSouth to perform any material terms of this Agreement, TCI or BellSouth may, on fifteen (15) business days' written notice require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within forty-five (45) business days after such notice, the Dispute may be referred to the Dispute Resolution procedure set forth in Section 12. In the event that the Parties reach agreement as to the new terms consistent with the above, the Parties agree to make the effective date of such amendment retroactive to the effective date of such Order consistent with this section, unless otherwise stated in the relevant Order.

22. **Waivers**

A failure or delay of either Party to enforce any of the provisions hereof, to exercise any option which is herein provided, or to require performance of any of the provisions hereof shall in no way be construed to be a waiver of such provisions or options, and each Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

23. **Governing Law**

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the state of Georgia.

not in any way disparage or discriminate against the other Party or its products or services.

35. **Compliance with Applicable Law**

35.1 Each Party shall comply at its own expense with all applicable federal, state, and local statutes, laws, rules, regulations, codes, effective orders, decisions, injunctions, judgments, awards and decrees that relate to its obligations under this Agreement. Nothing in this Agreement shall be construed as requiring or permitting either Party to contravene any mandatory requirement of Applicable Law, and nothing herein shall be deemed to prevent either Party from recovering its cost or otherwise billing the other Party for compliance with the Order to the extent required or permitted by the term of such Order.

35.2 Each Party shall be responsible for obtaining and keeping in effect all approvals from, and rights granted by, governmental authorities, building and property owners, other carriers, and any other persons that may be required in connection with the performance of its obligations under this Agreement. Each Party shall reasonably cooperate with the other Party in obtaining and maintaining any required approvals and rights for which such Party is responsible.

36. **Labor Relations**

Each Party shall be responsible for labor relations with its own employees. Each Party agrees to notify the other Party as soon as practicable whenever such Party has knowledge that a labor dispute concerning its employees is delaying or threatens to delay such Party's timely performance of its obligations under this Agreement and shall endeavor to minimize impairment of service to the other Party (by using its management personnel to perform work or by other means) in the event of a labor dispute to the extent permitted by Applicable Law.

37. **Compliance with the Communications Law Enforcement Act of 1994 ("CALEA")**

Each Party represents and warrants that any equipment, facilities or services provided to the other Party under this Agreement comply with CALEA. Each Party shall indemnify and hold the other Party harmless from any and all penalties imposed upon the other Party for such other Party's noncompliance, and shall at the non-compliant Party's sole cost and expense, modify or replace any equipment, facilities or services provided to the other Party under this Agreement to ensure that such equipment, facilities and services fully comply with CALEA.

38. **Arm's Length Negotiations**

This Agreement was executed after arm's length negotiations between the undersigned Parties and reflects the conclusion of the undersigned that this Agreement is in the best interests of all Parties.